IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 77 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

M/S.THAKRAR TEXTURISING IND. PVT. LTD.

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

MR UTPAL M PANCHAL for the Petitioner.

MR SN SINHA for the Respondent.

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 03/03/2004

ORAL JUDGEMENT

1. Rule. With the consent of the parties, the matter is taken up for hearing today.

2. The petitioner is the original defendant, against whom the respondent-Board filed a suit, being Special Civil Suit No.8 of 1996, for recovering Rs.7,31,443.37 Ps. In the aforesaid suit, an ex parte decree was passed against the present petitioner-defendant, as, the

defendant did not remain present before the trial court to defend the suit. Subsequently, the petitioner submitted an application for setting aside the ex parte decree, by resorting to the provisions of Order 9 Rule 13 of the Code of Civil Procedure. At the time of preferring the said application, since there was a delay, a separate application, being Miscellaneous Civil Application No.49 of 1999, was preferred by the petitioner for condoning the delay in preferring the said application for setting aside the ex parte decree. The said application was heard by the learned 3rd Joint Civil Judge (Senior Division), Bharuch, who, by the impugned order dated 21st March, 2001, allowed the application. The trial court also set aside the ex parte decree passed in Special Civil Suit No.8 of 1996. The trial court, however, directed the petitioner to deposit Rs.7,00,000/- in the trial court within a stipulated time. The trial court also further observed that the said amount is to be ultimately adjusted subject to the final outcome of the said suit. The said order is challenged at the instance of the petitioner-original defendant.

3. Mr.Panchal, learned Advocate for the petitioner, submitted that the petitioner-Company is absolutely closed since last considerable period and it is not possible for the petitioner-Company to deposit substantial amount of Rs.7,00,000/-, as ordered by the trial court.

4. At the time of issuance of notice, a learned single Judge of this Court directed the petitioner to deposit 25% of that amount of Rs.7,00,000/-, which comes to Rs.1,75,000/-. It is admitted by both the sides that the said amount of Rs.1,75,000/- is deposited by the petitioner by way of direct deposit with the Board and the Board has also given receipt in this behalf. It seems that, instead of depositing the said amount in the execution proceedings, the amount is paid directly to the Board. At the time of hearing of this matter, Mr.Panchal, learned Advocate for the petitioner, submitted that the petitioner shall deposit further amount of Rs.2,00,000/-, latest by 31st March, 2004. The further amount of Rs.2,00,000/- may be deposited before the Executing Court. Such amount to be deposited by 31st March, 2004. The ex parte decree is accordingly set aside on condition that the petitioner shall deposit further amount of Rs.2,00,000/-. He, however, requested that, since the Company is closed, the petitioner may be permitted to contest the main suit by depositing additional amount of Rs.2,00,000/-.

Considering the fact that the court has set aside the ex parte decree and considering the financial position of the petitioner-Company and considering the submission of Mr.Sinha for the Board that, till today, the Board could not execute the decree, even though Darkhast Application is pending since long, the order of the trial court, directing deposit of Rs.7,00,000/-, is modified and the trial court's order is substituted by holding that the petitioner shall deposit, in all, Rs.3,75,000/-, instead of Rs.7,00,000/-, as directed by the trial court. Since the petitioner has already deposited Rs.1,75,000/- with the Board, the petitioner is directed to deposit additional amount of Rs.2,00,000/- in the executing court, i.e. in Darkhast Application No.1 of 2000, which is pending in the Court of Civil Judge (Senior Division), Bharuch. The said deposit is to be made on or before 31st March, 2004. On such deposit, the order passed by the trial court regarding setting aside the ex parte decree shall come into force and, thereafter, the trial court shall proceed with the suit on its own merits. So far as all other conditions imposed by the trial court in the order are concerned, they shall remain, as they are. The impugned order is modified to the extent that, instead of Rs.7,00,000/-, the petitioner is now directed to pay, in all, Rs.3,75,000/-. The said payment will be subject to the final outcome of the Special Civil Suit. The trial court thereafter, after ensuring that the aforesaid payment is made by the petitioner, shall proceed with the suit and may try to dispose of the same, at the earliest, and in any case, within a period of six months after the same is taken up for hearing.

On such deposit, the respondent-Board shall be entitled to withdraw the same unconditionally.

5. The C.R.A. is partly allowed. Rule is made absolute to the aforesaid extent, with no order as to costs.

3rd March, 2004 (P.B. Majmudar, J.)

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(apj)